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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

Docket No.: B-33152A/GER

Hoke V. BULLARD et al.

APPLICATION NO: 10/644,329

Examiner: Carolyn T. Blake

FILED: August 20, 2003

Group Art Unit: 3724

FOR: Feeding Implement

**MS: APPEAL BRIEF PATENTS**

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

**APPEAL BRIEF**

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## REAL PARTY IN INTEREST

The real party in interest in this appeal is Gerber Products Company.

## RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences.

## STATUS OF THE CLAIMS

Claims 10-15 are pending in this application, and all of these claims stand rejected. Claims 10-15 are appealed.

## STATUS OF AMENDMENTS

Amendments to the claims after the mailing of the final rejection have been entered. Claim 10 was amended to change "said transport" to "said transport portion" for clarity.

## SUMMARY OF THE INVENTION

The present invention is directed to a feeding implement. The implement has a handle, a transport portion, and a mouth guard connected in between the transport portion and the handle portion. The transport portion has at least two substantially flat surfaces, and each surface has a plurality of grooves located thereon.

## ISSUES

U.S. Patent No. 5,711,759 to Smith et al. discloses an oral hygiene device with a handle, a flange, and a head, but Smith '759 does not disclose a head that has at least two substantially flat surfaces with a plurality of grooves located thereon. The claimed invention has a transport portion that has at least two substantially flat surfaces, and each surface has a plurality of grooves located thereon. Can Smith '759 anticipate the invention under 35 U.S.C. §102(b) when it does not disclose all of the limitations of the invention?

## GROUPING OF THE CLAIMS

Claims 10-15 do stand or fall together.

## ARGUMENT

It was alleged that Figures 1-3 of Smith '759 anticipated, under 35 U.S.C. §102(b), all of the limitations of claims 10-15. In claim 10 d), the transport portion has at least two substantially flat surfaces, and each substantially flat surface has a plurality of grooves located thereon. In Figures 1-3 of Smith '759, the head member (8) is a curved structure. While the head member (8) can be rectangular in shape (column 4, lines 9-11), there is no disclosure of a plurality of grooves located on a substantially flat surface of the head member (8). Figures 1-3 only show nodules (12, 32, or 40) that extend above the surface of the head member (8).

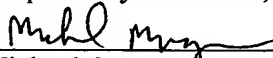
In the Office Action mailed on January 5, 2005, it was alleged that Figure 11 of Smith '759 anticipated the claims under 35 U.S.C. §102(b). In Figure 11 of Smith '759, the article shown by the figure is in cross-section. From the Brief Description of Drawings at column 3, lines 48-50, Figure 11 was intended to be a perspective view. Figure 11, however, is presented as a cross-sectional view as evidenced by the cross-hatching marks and the illustration of the internal liquid flow system. A cross-sectional view only shows what a plane passing through the structure would look like at that specific location. There is no disclosure in Figure 11 as to the overall structure of the head member. An infinite number of structures are possible on either side of the cross-sectional plane. The actual structure of the head member in Figure 11 is therefore indefinite, and it does not disclose the structure of a transport portion having at least two substantially flat surfaces, and each substantially flat surface having a plurality of grooves located thereon.

Because there is no disclosure of a plurality of grooves located on a substantially flat surface, it is respectfully submitted that claims 10-15 are not anticipated by U.S. Patent No. 5,711,759 to Smith et al.

FOR THESE REASONS, Applicants respectfully petition this Honorable Board to reverse the rejection set forth by the Examiner. Should the Board have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

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Respectfully submitted,

  
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Date: 5 October 2005

## APPENDIX

### CLAIMS INVOLVED IN THIS APPEAL

Claims 1-9 (canceled)

10. (Previously Presented) A feeding implement, comprising:
  - a) a handle portion shaped to permit grasping by a user;
  - b) a transport portion connected to said handle portion for dipping into solid food;
  - c) a mouth guard connected in between said transport portion and said handle portion; and
  - d) said transport portion having at least two substantially flat surfaces, each substantially flat surface having a plurality of grooves located thereon.
11. (Previously Presented) The feeding implement of Claim 10, wherein said substantially flat surfaces have a concave curvature.
12. (Previously Presented) The feeding implement of Claim 10, wherein said transport portion tapers away from said mouth guard.
13. (Previously Presented) The feeding implement of Claim 10, wherein said handle portion has a plurality of protuberances located thereon.
14. (Previously Presented) The feeding implement of Claim 13, wherein said protuberances are ridges.
15. (Previously Presented) The feeding implement of Claim 10 wherein said mouth guard has at least two points of a perimeter of said mouth guard in contact with a surface when said feeding implement is placed on said surface.



CASE CAVB-33152A

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IN RE APPLICATION OF

Art Unit: 3724

BULLARD ET AL.

Examiner: Hwei Siu Chou Payer

APPLICATION NO: 10/644,329

FILED: AUGUST 20, 2003

FOR: FEEDING IMPLEMENT

**MS: Appeal Brief- Patents**

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

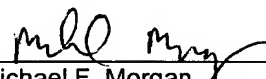
Enclosed herewith are three copies of the Appeal Brief in the above-identified application.

☒ Please charge Deposit Account No. 19-0134 in the name of Novartis in the amount of \$500 for payment of the appeal fee. An additional copy of this paper is here enclosed. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 19-0134 in the name of Novartis.

☐ Enclosed is a Petition for Extension of Time.

Respectfully submitted,

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